



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnd, mnsd, o, olc, rpp, ss

Introduction

The applicants seek a variety of orders related to a tenancy that ended following the death of the tenant of the subject premises. The applicants are the administrators of the tenant's estate.

Among other things, the applicants allege that the respondents impersonated the deceased tenant at his bank and emptied his safety deposit box of cash; that the tenants' siblings were refused entry to their brother's premises after he died; that they were forced to sign a release form before they could view his possessions; and that the majority of his possessions were either wrongfully taken or wrongfully thrown out by the respondents. Although they have calculated their total loss to be higher, they claim \$25,000.00 (the maximum permitted under the Residential Tenancy Act) from the respondents.

Issue(s) to be Decided

There are numerous jurisdictional, procedural, evidential, and substantive issues that arise related to this claim. These include:

1. Do the applicants have standing to make this claim? If not, is it appropriate to amend the application to reflect the proper name of the applicant?
2. Are the respondents correctly named as "landlords"? If not, is it appropriate to amend the application to reflect the proper name of the respondent?
3. Do I have authority to hear this claim, or has it been filed beyond the applicable limitation period?
4. Do I have authority over the issue of the alleged fraudulent and criminal behavior involving the access and removal of monies from the safety deposit box of the deceased?
5. Did the landlord wrongfully dispose of possessions belonging to the deceased following his death?
6. Are the applicants entitled to compensation for the value of the tenant's possessions that existed upon his death, but were never received by the applicants?
7. Have the applicants provided appropriate values for the subject possessions?

8. Are the applicants entitled to a refund of rent retained by the landlord for the portion of January (following the death of the tenant) and for February?

Background and Evidence

There are many facts that are in dispute. The following however, are some basic facts that are not in dispute or are my specific findings that I consider important or necessary to consider in the course of the determination of some of the preliminary jurisdictional issues.

The deceased was a tenant for many years in the rental unit specified above. Immediately prior to his death, his monthly rent was \$430.00, paid by way of government cheques directly to his landlord. Government records provided by the applicant indicate that rent cheques were accepted by the landlord until and including for the month of February, 2013.

Neither of the named respondents are the owners of the rental premises. The tenant's rent was paid to a corporation (YH) which was the registered owner (as bare trustee) of the lands upon which the hotel building in which the deceased rented a unit. The actual beneficial owner of the premises was a different corporation (PE). One of the named respondents (JK) is the sole shareholder and director of that second corporation.

Constable MR provided clear and entirely credible evidence. She testified that on January 14, 2013 she was a first responder to the premises, following notice that the occupant had died in the premises. There was a very strong odor in the premises and the coroner estimated the tenant had died about two weeks earlier. There was no information found in the premises as to any next of kin. The body was removed and the premises secured. JK (a named respondent) identified himself as an owner, and after the premises were released by the coroner, the tenant's keys were provided to JK.

JK testified he took possession of the rental unit on or about January 18, 2013. I accept this testimony as truthful and reliable .

The siblings of the deceased live in Winnipeg. The applicant ILD is a sister, and attended this hearing. The tenant's brother, DD, also attended this hearing. They were both notified of their brother's death on January 21, 2013. They flew to Victoria to deal with their brother's effects. JK initially refused to allow them to view the effects, ostensibly because they did not produce a Will that gave them any authority to deal with the estate of their brother. Subsequently he agreed to let them view the effects, but only if they first signed a Consent, Release and Indemnity form. On January 24, 2013, after they signed the form, he permitted the applicants to view and take any of the remaining possessions. Many of the possessions however, including all clothing and bedding had already been bagged and destroyed by the landlord due to their apparent contamination by the proximity to the body of the deceased for two weeks.

On January 22, 2014, both named respondents were charged with the criminal offense of theft of \$5,000 or under from the tenant's estate. This dealt with an alleged impersonation of the tenant and withdrawal of funds from his safety deposit box.

The deceased had died intestate, with the date of death determined to be January 1, 2013. Letters of Administration were eventually granted by the Supreme Court of British Columbia on December 23, 2014, which appointed the female applicant (ILD) and another female (LDG) as the personal representatives of the estate of the deceased.

The Application for Dispute Resolution was initially filed online by ILD on February 27, 2015. The filing fee was paid on that date. The claim was amended on March 4, 2015, and a Notice of Hearing was issued by the Residential Tenancy Branch on March 6, 2015.

Analysis

Issue #1. Do the applicants have standing to make this claim? If not, is it appropriate to amend the application to reflect the proper name of the applicant?

The named applicants are the lawful representatives of the estate of the tenant. The claim was improperly filed in their names personally, and although they are authorized to bring the claim on behalf of the estate, the claim should have been brought in the name of the estate of the deceased tenant. The applicant ILD who attended the hearing agreed that the claim be amended in this manner. Given that both named applicants are the lawful representatives of the estate, I do not consider the landlord to be prejudiced by this amendment. I ruled at the hearing that the claim be amended as being a claim by the Estate of JFHD, not by the named personal representatives of the estate, and that ruling is hereby ratified.

Issue #2. Are the respondents correctly named as "landlords"? If not, is it appropriate to amend the application to reflect the proper name of the respondent?

The lawyer for the respondents submits that the named respondents are individuals that are improperly named as the deceased's landlords. Counsel submits that it is appropriate that the claim be dismissed in full, with liberty to re-apply as against the proper landlord.

I have carefully considered this submission. I do not find proven that the respondent TPD has status as a "landlord", as that term is defined under the Residential Tenancy Act. He was not an owner, and is not demonstrated to have had authority to permit occupation, or to have exercised the power of a landlord. I therefore consider him to have improperly named as a respondent in this claim. The claim as against him as a respondent and landlord, is hereby dismissed.

I find that the other named respondent (JK) is also not the owner of the subject premises. As noted above, the bare trust owner and the beneficial owner are both corporations, and rent was paid to the bare trust corporate entity (and not to JK personally). However, the Residential Tenancy Act specifically defines a “landlord” to include the owner’s agent or a person who on behalf of the landlord permits occupation of the unit, or exercises powers and performs duties under the Act. JK clearly falls within this definition of “landlord”, and I accept that he is an agent of the owner. This is evident by the fact that JK accepted the keys and took possession of the premises once they were released by the coroner. It is evidenced by his taking control over the tenant’s personal possessions. It is evidenced by the fact that he required the tenant’s siblings to sign the Consent, Release and Indemnity form before they could see the tenant’s possessions, and that he is named as an Indemnified Party in that document along with the beneficial corporate owner of the premises. I find that he is an agent of the owner, and as such was permitted to be named as a “landlord” in that capacity. No further amendment is required.

Issue #3. Do I have authority to hear this claim, or has it been filed beyond the applicable limitation period?

Section 60 of the Residential Tenancy Act provides:

- (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
- (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

In order to determine whether this application was filed within the applicable 2 year limitation period, I must determine both the date that the application was made, and the date the tenancy ended.

In terms of the making of the application, Rule 2.6 of the Rules of Procedure sets out that an application is considered filed, “... when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the RTB directly or a Service B.C. office”. I accept as credible and reliable the testimony of ILD that she initiated the claim on February 27, 2015. Her filing fee was paid on that date, and the initial application was filed online on that date. This testimony is supported by audit notes related to the filing of this application, which confirm the creation of this claim on February 27, 2015, and that it was subsequently amended on March 4, 2015. I therefore find that the claim was effectively made February 27, 2015.

The parties do not agree as to the date the tenancy ended. ILD submits that since rent was accepted by the landlord for February, 2013, the end of tenancy must be February 28, 2013. As the claim was filed February 27, 2015, she contends that it was made within the limitation period which ended February 28, 2015. Counsel for the respondent argues that the tenancy ended with the death of the tenant, or alternatively on the date that possession was released by the coroner and keys delivered to the landlord on January 18, 2013. Counsel did not agree that the claim was filed February 27, 2015 (as the date on the Application is March 4, 2015), but submits that even if the filing date was February 27, 2015, this date still is beyond the two year window since the tenancy ended by January 18, 2013.

The Residential Tenancy Act does not provide clear guidance over the effective end date of a tenancy when a tenant dies. In considering this issue, I note that:

1. The landlord accepted rent for the entire month of February, 2013;
2. The landlord gained possession of the premises on January 18, 2013.

I also note in passing that the applicant's claim includes a claim for recovery of the rent taken by the landlord for February, as well as portion of the rent for January, suggestive that the tenancy is considered by the applicant to have ended prior to the end of February, otherwise no claim for a rebate of the rent could be supported.

More importantly, I note that the payment of rent for a specified period does not in all cases support a finding that the tenancy continues for that period. For example, a tenant may pay rent for a certain month, but then vacate the premises prior to the end of that month. Section 44(1)(d) of the Act specifies that if a tenant vacates the rental unit, the tenancy has ended. In a case of a death of a tenant and the absence of an estate representative for the tenant confirming the continuation of the tenancy, it is not unreasonable for a landlord to consider that the tenant's death is effectively a vacancy of the premises, and that the tenancy has ended. I tenancy would otherwise endure indefinitely, given obvious difficulties with serving of notices to end the tenancy to the deceased tenant, for example.

I further note that section 44(1)(e) specifies that a tenancy ends if the tenancy agreement is frustrated. The doctrine of frustration provides that an agreement is frustrated when some event makes performance impossible or radically undermines its very purpose. Examples of frustration in the context of a landlord-tenant relationship could include the burning down of the apartment building in which the tenancy occurred, making it impossible for the landlord to provide the rental premises to the tenant. The death of a tenant may also be a frustrating event, in cases where there is no one on behalf of the tenant's estate who comes forward to pay rent, or otherwise stand in the tenant's shoes as party to the tenancy agreement. In this case, constable MR confirmed that the police were unable to determine if there were next of kin, and confirmed that possession of the premises were therefore delivered to the landlord once the site was released. From a practical and health and safety perspective, this was important given the contamination of the premises related to the presence of the body for an extended period. These factors support a finding that the tenancy was frustrated.

Mitigated as against these factors is the fact the landlord accepted rent to the end of February. It may well be, as is posited by the applicant, that the acceptance of rent by the landlord under these circumstances was improper, but that claim is an issue that I would determine only upon finding that the claim falls within the limitation period.

My review of these factors satisfies me that the tenancy ended on January 18, 2013, the date that the landlord took possession of the premises.

It follows that this application, made February 27, 2015, is made outside the two year limitation period. I therefore have no jurisdiction to determine the merits of the claim. As a result of this finding, I also need not address the further issues noted at the outset.

Conclusion

This matter is dismissed in full, for want of jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 11, 2015

Residential Tenancy Branch

